

HOUSE No. 1815

The Commonwealth of Massachusetts

PRESENTED BY:

Kay Khan

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act establishing paid sick days.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Kay Khan	11th Middlesex
Patricia D. Jehlen	Second Middlesex
Denise Provost	27th Middlesex
Steven J. D'Amico	4th Bristol
Frank I. Smizik	15th Norfolk
Christine E. Canavan	10th Plymouth
Carlo P. Basile	1st Suffolk
Alice K. Wolf	25th Middlesex
Joyce A. Spiliotis	12th Essex
Peter v. Kocot	1st Hampshire
Ellen Story	3rd Hampshire
Denis E. Guyer	2nd Berkshire
Angelo J. Puppolo, Jr.	12th Hampden
Mary E. Grant	6th Essex
Bill Bowles	2nd Bristol
Gloria L. Fox	7th Suffolk
Jay R. Kaufman	15th Middlesex
Robert P. Spellane	13th Worcester
Ruth B. Balser	12th Middlesex

William Lantigua	16th Essex
Martha M. Walz	8th Suffolk
Rosemary Sandlin	3rd Hampden
Michael F. Rush	10th Suffolk
Martin J. Walsh	13th Suffolk
David P. Linsky	5th Middlesex
Stephen R. Canessa	12th Bristol
Pam Richardson	6th Middlesex
Sean Garballey	23rd Middlesex
Willie Mae Allen	6th Suffolk
William N. Brownsberger	24th Middlesex
Antonio F.D. Cabral	13th Bristol
Cheryl A. Coakley-Rivera	10th Hampden
Danielle W. Gregoire	4th Middlesex
Elizabeth A. Malia	11th Suffolk
John W. Scibak	2nd Hampshire
Brian P. Wallace	4th Suffolk
Steven M. Walsh	11th Essex
Geraldo Alicea	6th Worcester
William C. Galvin	6th Norfolk
Benjamin Swan	11th Hampden
James Dwyer	30th Middlesex
Carl M. Sciortino, Jr.	34th Middlesex
Timothy J. Toomey, Jr.	26th Middlesex
Michael Brady	9th Plymouth
Thomas M. Stanley	9th Middlesex
Anne M. Gobi	5th Worcester
Paul J. Donato	35th Middlesex
Kevin G. Honan	17th Suffolk
Katherine Clark	32nd Middlesex
Linda Dorcena Forry	12th Suffolk
Thomas J. Calter	12th Plymouth
Tom Sannicandro	7th Middlesex
Mark V. Falzone	9th Essex
Robert L. Rice, Jr.	2nd Worcester
Geraldine Creedon	11th Plymouth
John P. Fresolo	16th Worcester
James R. Miceli	19th Middlesex
James J. O'Day	14th Worcester District
Walter F. Timilty	7th Norfolk
Matthew C. Patrick	3rd Barnstable
Jason Lewis	31st Middlesex

Allen J. McCarthy	7th Plymouth
Byron Rushing	9th Suffolk
Jennifer Benson	37th Middlesex
John F. Quinn	9th Bristol
David B. Sullivan	6th Bristol
Barbara A. L'Italien	18th Essex
Brian Michael Ashe	2nd Hampdon
Kathi-Anne Reinstein	16th Suffolk
Sean Curran	9th Hampden
James Cantwell	4th Plymouth
Michael A. Costello	1st Essex
Ann-Margaret Ferrante	5th Essex
Jonathan Hecht	29th Middlesex
Paul McMurtry	11th Norfolk
Jeffrey Sánchez	15th Suffolk
Stephen Stat Smith	28th Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1803 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT ESTABLISHING PAID SICK DAYS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 **SECTION 1.**

2 **SHORT TITLE**

3 This Act may be cited as the “Paid Sick Days Act”.

4 **SECTION 2: PREAMBLE**

5 The legislature, in order to promote the health and welfare of families and the public health of
6 the Commonwealth, and to advance healthier, more productive and more equitable workplaces
7 throughout the Commonwealth, hereby provides all employees shall be entitled to earn up to a
8 minimum of 7 paid sick days per year, or the appropriate percentage thereof, and directs all
9 employers to allow employees to use up to 7 paid sick days per year who have earned such time
10 as determined by this Act.

11 **SECTION 3: FINDINGS**

12 The Legislature of the Commonwealth of Massachusetts makes the following findings:

13 1) Preventive and routine medical care helps avoid illness and injury by detecting illnesses
14 early and shortening the duration of illnesses. Providing employees time off to attend to their
15 own health care needs ensures that they will be healthier and more efficient employees in the
16 long run. Routine medical care results in savings by detecting and treating illness and injury
17 early and decreasing the need for emergency care. These savings benefit public and private
18 payers of health insurance, including private businesses.

19 2) Public health is jeopardized as many workers who do not have paid sick days have the most
20 frequent contact with the public, such as workers in food services, nursing homes, child care
21 centers, and retail clerks. The spread of contagious diseases such as the flu cannot be stopped
22 without a universally adopted paid sick days policy.

23 3) Nearly every worker in the Commonwealth is likely to need, during any given year, time
24 off to attend to their own illness or that of an immediate family member, or for routine medical
25 care. Almost half of all private sector workers do not earn a single paid sick day per
26 year. Low-income workers are significantly worse off. Over three quarters of the poorest
27 families (76 percent) lack any regular paid sick leave.

28 4) Little more than 20% of workers who earn paid sick days can use it to care for children or
29 elder adult family members who may be ill.

30 5) When parents are available to care for their children who become sick, the children's
31 recovery is faster, more serious illnesses are prevented, and the children's overall mental and
32 physical health is improved. Parents who cannot afford to miss work must send children with a
33 contagious illness to childcare or school, contributing to the high rate of infections in child care
34 centers and schools.

6) The majority of elder-care is performed by working family members. About one in every four employees has provided informal care to an elderly family member or friend in the past year.

7) Approximately 1.5 million women are assaulted, stalked or raped by an intimate partner each year; 31% of American women report being physically or sexually abused by a husband or boyfriend at some point in their lives; and, on average, more than 3 women are murdered every day by their husbands or boyfriends. 96% of employed victims of domestic violence experience some kind of work-related problem due to violence; victims may need to take time off from work to participate in criminal and civil legal proceedings and to address the effects of domestic violence such as relocating their family and obtaining medical care. Providing paid sick days would mean important job security for domestic violence victims, as between a quarter to a half of all victims of domestic violence lose their jobs.

8) Allowing employees to earn 7 paid sick days per year is affordable for employers and good for business. Requiring all employers to provide paid sick days levels the playing field for employers so all those who want to provide this benefit can, without fear of being at a competitive disadvantage. Employers who provide paid sick days see greater retention and avoid the problems of “presenteeism” or employees coming to work sick. Studies have shown that employers that offer paid sick days have higher productivity and morale, reduced absenteeism, and decreased turnover and training costs. Sick workers are less productive and spread their germs to about 20% of their co-workers. Paid sick days will save Massachusetts businesses about \$63.2 million annually in wages paid to workers who are too sick to be productive, and \$627.2 million in turnover costs.

SECTION 4: PURPOSE AND CONSTRUCTION

1) The purpose of this Act is to ensure that all workers in the Commonwealth of Massachusetts can address their own health needs and the health needs of their families by requiring employers to provide a minimum of 7 earned paid sick days per year; and

2) To alleviate undue burden on public and private health care systems by enabling workers to seek early and routine medical care for themselves and their family members.

3) This Act is a remedial act which shall be liberally construed to further its purpose and all presumptions shall be made in favor of providing workers with paid sick days leave.

SECTION 5:

Chapter 149 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after section 148B the following section:-

Section 148C

(a) Definitions: As used in this section, the following terms shall have the following meanings:

“Child”, a biological, adopted, or foster child, stepchild, legal ward, or child of a parent standing in loco parentis who is under 18 years of age, or 18 years of age or older but incapable of earning wages because of a mental or physical incapacity.

“Employee”, any person who performs services for an employer for wage, remuneration, or other compensation.

“Employer”, any individual, corporation, partnership or other entity, including any agent thereof, who engages the services of an employee or employees for wages, remuneration or other compensation.

“Federal act”, the Family and Medical Leave Act of 1993, 29 U.S.C. sections 2601 to 2654 inclusive, as it may be amended.

“Health care provider”, a provider who ____

(1)(i) is permitted, pursuant to written policy of each individual institution providing health care services, to provide a patient with written notice of his/her illness or condition resulting in absence from work, for the patient to provide his/her employer; or

(ii) is any other person determined by the attorney general to be capable of providing health care services; and

(2) is not employed by an employer to whom the provider issues certifications under this section.

“Parent”, a biological, foster, stepparent or adoptive parent of an employee or an employee’s spouse, or other person who stood in loco parentis during the childhood of an employee or employee’s spouse.

“Seven Paid Sick Days”, the total number of paid sick hours computed by determining the number of hours in a regular work day and multiplying this number by seven.

“Sick day”, a portion of, or a regular workday when an employee is unable to report to work because of the reasons described in subsection (c).

“Spouse”, the meaning given such term by the marriage laws of the Commonwealth of Massachusetts.

(b) All employees who work in the Commonwealth who must be absent from work for the reasons set forth in subsection (c) shall be entitled to not less than 7 sick days with pay during a

12-month period, or to a pro rata number of paid days or hours under the provisions of subsection (d). The 12-month period for each employee shall be calculated from the date-of-hire or subsequent anniversary date.

(c) Paid sick days shall be provided to an employee by an employer for:

(1) care for the employee's child, spouse, parent, or parent of spouse who is suffering from a physical or mental illness, injury, or medical condition that requires home care, professional medical diagnosis or care or preventative medical care, or that is covered under the federal act; or

(2) care for the employee's own physical or mental illness, injury, or medical condition that requires home care, or professional medical diagnosis or care or preventative medical care, or that is covered under the federal act; or

(3) an employee to attend a routine medical appointment for himself or herself or for a child, or, in the case of a spouse, parent, or parent of spouse otherwise in need of care; or

4) an employee to address the psychological, physical or legal effects of domestic violence as defined in subsection (g1/2) of section 1 of chapter 151A.

(d) Paid sick days leave shall accrue at the rate of one hour of pay for every 30 hours worked up to the maximum of 7 paid sick days. Paid sick days may be used as accrued, or be loaned by the employer, at its discretion, to the employee in advance of such accrual, provided that an employer shall not require an employee to reimburse it for any unearned sick days the employee is allowed to use. Unless the employer and employee agree to designate otherwise, for periods of paid sick day leave that are less than a normal workday, the leave shall be counted on an hourly basis, or the smallest increment that the employer's payroll system uses to account for absences or use of leave.

(e) Subject to the provisions of subparagraph (o), an employer may require certification of the qualifying illness, injury or health condition when a paid sick day leave period covers more than 3 consecutive workdays. Any reasonable documentation signed by a health care provider involved in following or treating the illness, injury or health condition, and indicating the need for the amount of sick days taken, shall be deemed acceptable certification. The certification shall be issued at such time and in such manner the attorney general may by regulation require. The employer shall not delay the commencement of leave taken for purposes of subsection (c) or pay for this period on the basis that the employer has not yet received the certification. Nothing in this act shall be construed to require an employee to provide as certification any information from a health care provider that would be in violation of section 1177 of the Social Security Act or the regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act, 42 U.S.C. 1320d-2 note.

(f) If the necessity for paid sick days leave under this section is foreseeable, the employee shall provide the employer with not less than 7 days notice before the date the leave is to begin. If the necessity for leave is not foreseeable, the employee shall provide such notice as soon as is practicable after the employee is aware of the necessity of such leave.

(g) Paid sick days shall carry over annually to the extent not used by the employee, provided that nothing in this section shall be construed to require an employer to allow use of more than 7 paid sick days leave in any given year for an employee unless an employer agrees to do so. Employers shall not be required to pay out unused sick days upon the separation of the employee from the employer.

(h) It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under, or in connection with this section, including, but not limited to using the taking of paid sick days under this section as a negative factor in an

employment action such as hiring, evaluation, promotion or a disciplinary action, or counting the paid sick days under a no-fault attendance policy.

(i) It shall be unlawful for any employer to take any adverse action against an employee because the employee 1) exercises rights or attempts to exercise rights under this section, 2) opposes practices which such employee believes to be in violation of this section, or 3) supports the exercise of rights of another under this section. Exercising rights under this section shall include but not be limited to filing an action, or instituting or causing to be instituted any proceeding under or related to this section; providing or about to provide any information in connection with any inquiry or proceeding relating to any right provided under this section; or testifying to about to testify in any inquiry or proceeding relating to any right provided under this section.

(j) The attorney general shall enforce this section, and may obtain injunctive or declaratory relief for this purpose. Violation of this section shall be subject to the penalties in section 27C(b)(1),(2),(4),(6),(7) and the provisions in section 150.

(k) The attorney general shall prescribe the employer's obligation to make, keep, and preserve records pertaining to this section and the requirements for keeping records under section 15 of chapter 151 shall apply to the records required under this section.

(l) Nothing in this section shall be construed to discourage employers from adopting or retaining paid sick day policies more generous than policies that comply with the requirements of this section and nothing in this section shall be construed to diminish the obligation of an employer to comply with any contract, collective bargaining agreement, or any employment benefit program or plan that provides greater paid sick day leave rights to employees than the rights established under this session.

(m) Employers who have a paid time off leave policy providing paid leave in excess of 20 days per year shall not be required to modify such policy, if such policy offers an employee the

option, at the employee's discretion, to take paid sick days that is at least equivalent to the paid sick days described in paragraphs (b), (c), and (f), or if the policy offers paid sick days leave in amounts equivalent to the amounts described in such paragraphs for the purposes that include the reasons described in subparagraph (b).

(n) The attorney general may adopt such rules and regulations as may be necessary to carry out the purpose and provisions of this act, including the manner in which an employee who does not have a health care provider shall provide certification.

(o) A notice of the provisions of this section shall be prepared by the attorney general, in English and other languages as required under section 62A(a)(iii) of chapter 151A. Each employer shall post this notice in a conspicuous location accessible to employees in every establishment where employees having rights under this section work and provide a copy to each such employee. Such notice shall include the following information:

(i) information describing the rights to paid sick days leave under this act;

(ii) information about the notices, documentation and any other requirements placed on employees in order to exercise their rights to paid sick days;

(iii) information that describes the protections that an employee has in exercising rights under this act;

(iv) the name, address, and phone number of the relevant department of the attorney general's office where questions about the rights and responsibilities under the act can be answered; and

(v) information about filing of an action with the attorney general under this act.

SECTION 6: OUTREACH

The executive office of health and human services, in coordination with the attorney general, shall develop and implement a multilingual outreach program to inform employees, parents, and persons who are under the care of a health care provider about the availability of paid sick days under this act. This program shall include the distribution of notices and other written materials in English and other languages to all child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers, and other health care providers.

SECTION 7:

Section 150 of chapter 149 as so appearing is hereby further amended by inserting after the number "148B" in line 21, the following:-148C.

SECTION 8: EFFECTIVE DATES

(a) This act shall take effect within 90 days of its passage.

(b) In the case of a collective bargaining agreement in effect on the effective date

proscribed by subsection (a), this act shall take effect on the earlier of the date of the termination of such agreement; or the date that occurs 12 months after the promulgation of regulations by the attorney general.